

COUNTY OF SAN DIEGO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject

Subdivision of Land-Substitution of One Form of Improvement
Security for Another - Reduction of Security

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Purpose

To establish a procedure whereby a subdivider who has furnished improvement security in the form as prescribed in the County Subdivision Ordinance to guarantee construction of and payment for subdivision improvements may substitute any other form as prescribed in the County Subdivision Ordinance for said security; and to establish rules and a procedure whereby a subdivider may obtain a partial release of security guaranteeing the performance of the subdivision improvement agreement.

From time to time to expedite the filing of a subdivision map, a subdivider will furnish security as prescribed in the County Subdivision Ordinance to satisfy the requirement of Sections 66462 and 66499 of the Government Code (Subdivision Map Act) that he/she furnish improvement security to guarantee faithful performance of the agreement to construct or install subdivision improvements and to guarantee payment to the contractor and others who furnished labor or materials. On occasion, a subdivider subsequently determines he/she would prefer to substitute another form of approved security in lieu of his/her present security. Current procedures require that a subdivider first obtain the consent of the Board of Supervisors to such substitution.

On occasion a subdivider who has completed a portion of the improvements pursuant to the agreement desires that the amount of security be reduced. In the case of a surety bond, a reduction in the penal amount (face amount) of the security will result in reduced premiums. In the event cash is deposited as security, a reduction in the amount held will allow the subdivider the use of the money. The present form of Instrument of Credit in use by the County provides for a periodic release of funds held in trust as work progresses and such fact is certified. Section 66499.7 of the Government Code (Subdivision Map Act) authorizes the partial release of improvement security.

Policy

It is the policy of the Board of Supervisors that:

A subdivider who has furnished improvement security in the form prescribed in the County Subdivision Ordinance, pursuant to Section 66499 of the Government Code (Subdivision Map Act) may substitute in place of said security any other form of security as prescribed in the above ordinance.

On request of a subdivider to make such substitution, the Director of Public Works, with the assistance of County Counsel where necessary, shall cooperate with the subdivider in the preparation of an appropriate form of substitute security to replace the present security. Upon approval, the Director of Public Works will forward the substitute security

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to the Clerk of the Board of Supervisors for filing. The Clerk will release the original security to the appropriate surety/owner in writing.

The subdivider may also substitute in place of said security, new security in a reduced amount all according to the following procedures:

Procedure for Improvement Security Reduction

The Director of Public Works is hereby authorized and delegated the authority to partially release security for the performance of the subdivision improvement agreement pursuant to the following rules and procedures:

- a. Improvement security may be released only upon written request by the subdivider who posted such security.
- b. The Director of Public Works is authorized to consider requests by a subdivider for the partial release of security only twice for any one agreement.
- c. Upon receipt of a written request for the partial reduction of improvement security, together with detailed estimates of the value of the work remaining to be completed, the Director of Public Works shall make an initial determination whether such request exceeds the number allowed and the security is sufficient in amount to be released. If satisfied that the security may be reduced, the Director of Public Works shall inspect the improvements and verify the percentage and the value of the work remaining to be completed. The Director of Public Works may then authorize a reduction in the amount of security as follows:
 1. No reduction of improvement security is authorized where the Director determines that more than 50% of the value of work remains to be completed.
 2. Whenever 50% or more of the value of work has been completed, the original security may be released subsequent to its replacement by security equal to the current value of the remaining work, plus 10% of the current value of the remaining work as a contingency. No incremental release, however, shall result in a remaining security less than 10% of the original.
 3. Any partial release authorized herein shall not apply to any required guarantee and warranty period nor to the amount of the security deemed necessary by the Director for such guarantee nor to costs and reasonable expenses and fees, including reasonable attorneys fees therefore.

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4. Upon a determination that the improvement security may be partially released, the Director shall notify the holder of the security, the Clerk of the Board of Supervisors and the subdivider in writing of the amount of the reduction and that the partial reduction does not apply to the warranty or guarantee period or the amount of security deemed necessary for such warranty or guarantee nor to costs and reasonable expenses and fees including reasonable attorney's fees.

Sunset Date

This policy will be reviewed for continuance by 12-31-09.

Board Action

11-10-69 (63)

1-13-76 (15)

12-11-84 (8)

8-8-89 (33)

12-15-93 (5)

5-15-96 (11)

08-07-02 (5)

CAO Reference

1. Department of Public Works
2. Department of Planning and Land Use
3. County Counsel